

Private Letter Ruling: Petition to use alternative apportionment is granted.

October 17, 2005

Dear:

This is in response to your letter dated June 10, 2005, in which you request a Private Letter Ruling on behalf of CORPORATION and its subsidiaries ("CORPORATION"). The Private Letter Ruling will bind the Department only with respect to CORPORATION for the issue or issues presented in this ruling.

The facts and analysis as you have presented them in your letter dated June 10, 2005, are as follows:

CORPORATION ("CORPORATION"), the taxpayer, is writing to petition for alternative allocation or apportionment. The taxpayer is requesting permission to use a separate accounting method in calculating the apportionment factor for the tax year ending December 31, 2004. The separate accounting method on the schedules enclosed as Exhibit A will more clearly and accurately apportion income to Illinois based upon business activity within Illinois.

In July 2003, CORPORATION petitioned for use of a separate accounting method in the calculation of the apportionment factor for the 1998 and 1999 tax years on the ground that the standard apportionment method did not fairly represent the extent of its business activity in the State during those years. A copy of the petition is enclosed as Exhibit B. In November 2003, CORPORATION and the Department of Revenue ("Department") entered into an agreement where the Department granted CORPORATION's petition, allowing CORPORATION to use the separate accounting method for the 1998, 1999, 2000 and 2001 tax years. A copy of that agreement is enclosed as Exhibit C.

In March 2005, the Department of Revenue granted CORPORATION's petition to use the separate accounting method for the 2002 and 2003 tax years. A copy of the State's approval letter is enclosed as Exhibit D. In granting this petition, the Department ruled that CORPORATION is entitled to use the alternative method (without seeking pre-approval) for tax returns due on or after October 8, 2004, and stated that its ruling is binding as long as there is no pertinent change in material facts.

In keeping with the spirit of the previous ruling, CORPORATION is submitting this petition to disclose the following recent factual developments. Specifically, in September 2004, CORPORATION acquired COMPANY1 (COMPANY1), based in CITY1, Illinois, and an additional 20% ownership interest in COMPANY2. (COMPANY2), based in CITY2, Illinois. COMPANY1 operated a rate-regulated electric and natural gas transmission and distribution business serving over one million customers in areas contiguous to CORPORATION's existing Illinois utility service territories. COMPANY2 is an independent producer that sells its power output exclusively to its shareholders (CORPORATION and a Kentucky-based utility). Neither COMPANY1 nor COMPANY2 is party to the joint dispatch agreement described in the

March 2005 ruling.

While the foregoing transaction impacts the level of CORPORATION's income-producing activity in Illinois, the initial justification for allowing the alternative method holds true. As reflected on the Exhibit A schedules, the approved method clearly and accurately apportions income to Illinois based upon the most recent business activity in Illinois.

Under the November 2003 agreement and the March 29, 2005, letter granting CORPORATION's petition to use separate accounting, each member of CORPORATION's unitary business group apportioned its separate-company business income using its separate-company sales factor in which the Illinois numerator was determined using that member's own income producing activities.

Ruling

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

The documents submitted with your petition for the year 2004, and with the previous petitions, show that application of the provisions of Section 304(a) of the IITA would not fairly represent the extent of CORPORATION's business activities within Illinois, while the proposed method would fairly and accurately apportion CORPORATION's business income to Illinois.

Grant of Section 304(f) Petition

The petition of CORPORATION under Section 304(f) of the IITA to use the alternative apportionment formula described in this ruling is hereby granted, and for the taxable year ending December 31, 2005, and for Illinois Income Tax returns due (including extensions) on or after October 11, 2005, which is the first business day after October 8, 2005, which in turn is 120 days after the June 10, 2005, date the petition was filed, each member of CORPORATION's unitary business group shall apportion its separate-company business income using its separate-company sales factor in which the Illinois numerator was determined using that member's own income producing activities, as

shown in the schedules in Exhibit A to the current petition.

The factual representations upon which this ruling is based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the factual representations recited in this ruling are correct and complete. This Private Letter Ruling is revoked and will cease to bind the Department 10 years after the date of this letter under the provisions of 2 Ill. Adm. Code 1200.110(e) or earlier if there is a pertinent change in statutory law, case law, rules or in the factual representations recited in this ruling.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax